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U. S. DISTRICT COURT
N.D. OF N.Y.
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DEC 10 1997

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES BARTLETT, JOANNE BARTLETT,
BARTLETT DISPOSAL SERVICE, INC., and
BARTLETT DISPOSAL SERVICE COMPANY,

Defendants.

No. _____

COMPLAINT

233391



The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), brings this Complaint and alleges as follows:

Nature of the Action

1. This is a civil action for recovery of costs brought pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607. The United States seeks recovery from the above-named defendants of costs incurred by the United States with respect to the release or threatened release of hazardous substances at or from the Sidney Landfill Superfund Site (the "Site") located in Delaware County, New York.

Jurisdiction and Venue

2. This Court has jurisdiction over the subject matter of this action and over the defendants pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the United States' claims arose, and the threatened and actual releases of hazardous substances at or from the Site have occurred, in this district.

The Defendants

4. Defendants James Bartlett and Joanne Bartlett are individuals who reside in Bainbridge, New York. James and Joanne Bartlett are husband and wife and are persons within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

5. Defendant Bartlett Disposal Service, Inc. is a corporation incorporated in the State of New York which now or at past times material to this action has conducted business in the State of New York. Defendant James Bartlett owns all the shares of defendant Bartlett Disposal Service, Inc. and controls all its business operations. Bartlett Disposal Service, Inc. is the alter ego of James Bartlett. Bartlett Disposal Service, Inc. is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. Defendant Bartlett Disposal Service Company is a commercial entity which now or at past times material to this action has conducted business in the State of New York. Defendant Joanne Bartlett owns all the assets of Bartlett Disposal Service Company and operates Bartlett Disposal Service Company as her sole proprietorship. Bartlett Disposal Service Company is the alter ego of Joanne Bartlett. Bartlett Disposal Service Company is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

General Allegations

7. The Site comprises the former Sidney Landfill (also hereinafter sometimes referred to as the "Site") and those areas affected by contamination that has emanated from the Sidney Landfill, and is located in the Towns of Masonville and Sidney, Delaware County, New York.

8. Mr. Devere Rosa purchased the Site on or about November 17, 1967 and began operating it as a municipal and commercial landfill on or about December 1, 1967. At times material to this action, Mr. Rosa disposed of wastes at the Site which he collected from various sources.

9. On or about April 1, 1971, defendant James Bartlett took possession of the Site from Mr. Rosa, and on or about December 1, 1971, Mr. Bartlett entered into an installment contract to purchase the Site from Mr. Rosa.

10. From April 1971 through October 1972, Mr. Bartlett and his corporation, defendant Bartlett Disposal Service, Inc., operated the Site as a landfill.

11. At various times during the period when defendants James Bartlett and Bartlett Disposal Service, Inc. operated the Site as a landfill, "hazardous substances," within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), were disposed of at the Site.

12. An engineering investigation completed in 1987 on behalf of the New York State Department of Environmental Conservation indicated the presence of hazardous substances,

including metals, volatile organic compounds ("VOCs"), and polychlorinated biphenyls ("PCBs") at the Site.

13. In 1989, the Site was included on the National Priorities List ("NPL") of Superfund Sites, 40 C.F.R. Part 300, Appendix B, established pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B). The NPL includes those Superfund sites that EPA has determined present the potential for releases of uncontrolled hazardous substances causing harm to human health or the environment.

14. EPA has completed a remedial investigation and feasibility study ("RI/FS") to evaluate the nature and extent of the contamination at the Site and to assess remedial alternatives with respect to that contamination.

15. The RI has confirmed the presence of hazardous substances, including, without limitation, pesticides and PCBs, in surface soils and sediments at the Site. Groundwater sampling at the Site has confirmed the presence of hazardous substances, including trichloroethene ("TCE"), 1,1,1-trichloroethane ("TCA"), and their breakdown products, along with other VOCs, including toluene, xylene, and carbon disulfide. Surface water sampling at the Site has confirmed the presence of hazardous substances, including TCE and PCBs. EPA has also found that leachate emanating from the Site contains hazardous substances, including VOCs and PCBs.

16. EPA selected a remedy for the Site in its Record of Decision ("ROD") issued on September 28, 1995 to address the

release or threatened release of hazardous substances at or from the Site.

17. There have been releases, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), or threatened releases of hazardous substances into the environment at or from the Site.

18. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

19. The United States has incurred response costs, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), related to the releases or threatened releases of hazardous substances at or from the Site.

20. As a result of its response actions with respect to the Site, the United States has incurred approximately \$2.69 million in costs through July 31, 1996.

21. The costs of response actions by the United States with respect to the Site are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300, as promulgated under Section 105(a) of CERCLA, 42 U.S.C. § 9605(a).

22. By letter dated June 18, 1990 and entitled "Notice of Potential Liability," EPA notified defendants James Bartlett and Bartlett Disposal Service, Inc. of their potential liability under CERCLA with respect to contamination of the Site with hazardous substances.

23. On or about September 1, 1990, after he received EPA's Notice of Potential Liability, Mr. Bartlett created defendant Bartlett Disposal Service Company, which was and is wholly-owned

by his wife, defendant Joanne Bartlett. Mr. Bartlett then transferred substantially all of the assets of Bartlett Disposal Service, Inc. to Bartlett Disposal Service Company and Joanne Bartlett.

24. On information and belief, neither Mr. Bartlett nor Bartlett Disposal Service, Inc. received valuable consideration in exchange for the transfer of assets from Bartlett Disposal Service, Inc. to Bartlett Disposal Service Company and Joanne Bartlett.

25. On information and belief, the transfer of assets from Bartlett Disposal Service, Inc. to Bartlett Disposal Service Company and Joanne Bartlett was done with the intent to hinder, delay and defraud the United States as a creditor of James Bartlett and Bartlett Disposal Service, Inc.

26. Bartlett Disposal Service Company and Joanne Bartlett are the successors-in-interest to James Bartlett and Bartlett Disposal Service, Inc.

First Claim for Relief

27. Paragraphs 1 through 26 are realleged and incorporated herein by reference.

28. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part as follows:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section --

. . . .

- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,

. . . .

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for --

- (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan;
. . . .

42 U.S.C. § 9607(a).

29. Defendants James Bartlett and Bartlett Disposal Service, Inc. are both persons who operated the Site at the time of disposal of a hazardous substance at the Site, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

30. Pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), defendants James Bartlett and Bartlett Disposal Service, Inc. are jointly and severally liable to the United States for all costs incurred by the United States with respect to the Site, including prejudgment interest.

Second Claim for Relief

31. Paragraphs 1 through 30 are realleged and incorporated herein by reference.

32. Pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), defendants Joanne Bartlett and Bartlett Disposal Service Company, as the successors-in-interest to James Bartlett and Bartlett Disposal Service, Inc., are jointly and severally

liable to the United States for all costs incurred by the United States with respect to the Site, including prejudgment interest.

Prayer for Relief

WHEREFORE, Plaintiff, the United States of America, prays that this Court:

A. Enter judgment in favor of the United States, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), holding each of the defendants jointly and severally liable for all costs incurred by the United States with respect to the Site, plus prejudgment interest thereon;

B. Award the United States its costs in this action; and

C. Grant the United States such other and further relief as may be just and proper.

Respectfully submitted,

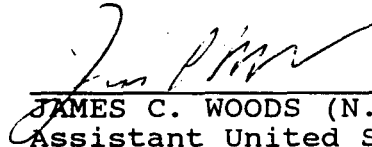


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Dated: 12/8, 1997

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

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Civil No.

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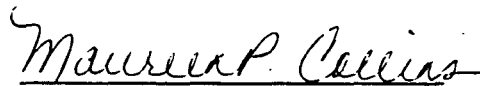
CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee of the United States Attorney for the Northern District of New York and is a person of such age and discretion as to be competent to serve papers.

That on December 10, 1997, she served a copy of the following: **SUMMONS', COMPLAINT, CONSENT DECREE and NOTICE OF LODGING OF CONSENT DECREE**, by placing same in an envelope addressed to the person(s) hereinafter named, at the place and address stated below, which is last known addresses, and by depositing said envelopes and contents in the United States Mail at Albany, New York 12207.

Addressee(s):

William H. Helferich, III, Esq.
Harter, Secrest & Emery
700 Midtown Tower
Rochester, New York 14606-2070


Maureen P. Collins
Paralegal Assistant